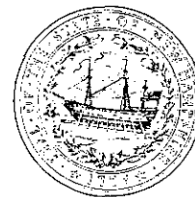




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

September 15 2004

Mr. John Lucey
Corning NetOptix, Inc.
69 Island Street
Keene, NH 03431

Re: Docket No. AF 04-057 – Corning NetOptix, Inc.

Dear Mr. Lucey:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Waste Management Division Director, and accepted by Commissioner Michael P. Nolin on September 13, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,


Michael Scafani,
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, DES Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Linda Birmingham, DES WMD
James Martin, DES Public Information Officer



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2900 FAX (603) 271-2456

Please Note: *Effective September 1, 2003, the street address is 29 Hazen Drive*



Corning NetOptix, Inc.
69 Island Street
Keene, New Hampshire 03431

ADMINISTRATIVE FINE
BY CONSENT

No. AF 04-057

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Corning NetOptix, Inc., pursuant to RSA 147-A:17-a. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH.
2. Corning NetOptix, Inc. ("CNO") is incorporated in Delaware and registered with the New Hampshire Secretary of State's Office on January 23, 1998. CNO has a mailing address of 69 Island Street, Keene, NH.

III. BACKGROUND

1. Pursuant to RSA 147-A, DES regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. CNO is a hazardous waste generator that notified the United States Environmental Protection Agency ("EPA") of its activities through DES on April 14, 1993. EPA Identification Number NHD986466381 was assigned to CNO's site located at 69 Island Street, Keene, NH.
4. On February 25, 2004, DES personnel inspected CNO for compliance with RSA 147-A and its implementing regulations, the Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued a Notice of Past Violation

("NOPV") to CNO on May 19, 2004. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Specifically, as stated in the NOPV, CNO failed to close one (1) 55-gallon satellite accumulation container of hazardous waste "Mixed Acids" located in the Plating Room, as required by Env-Wm 507.01(a)(3) and Env-Wm 509.03(d) ("Violation 1"). Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area.
2. Specifically, as stated in the NOPV, CNO failed to mark seven (7) 55-gallon containers of hazardous waste located in the Hazardous Waste Storage Area, with the EPA or state waste number, as required by Env-Wm 507.03(a)(1) d. ("Violation 2"). Env-C 612.06(l) authorizes a fine of \$600 for each container that is 55-gallons or greater, for a potential fine of \$4,200.
3. Specifically, as stated in the NOPV, CNO failed to document the time of the inspection, notation of observations and the date and nature of repairs or remedial actions in its inspection log. CNO also failed to conduct and document the required number of inspections of the hazardous waste storage area, as required by Env-Wm 509.02(a)(1) ("Violation 3"). Env-C 612.07(a) authorizes a fine of \$1,000 per inspection per area.
4. Specifically, as stated in the NOPV, CNO failed to conduct hazardous waste training for the following employees with hazardous waste management duties, as required by Env-Wm 509.02(a)(2): four (4) years of annual training for Alternate Emergency Coordinator Mike Ogg; no initial training for Alternate Emergency Coordinator Mike Dettleback ("Violation 4"). Env-C 612.07(b) authorizes a fine of \$1,750 per individual not trained for initial training and \$1,000 per individual not trained for annual updates, for a potential fine of \$5,750.
5. Specifically, as stated in the NOPV, CNO failed to have, within 100 feet of the Main Hazardous Waste Storage Area, an internal/external communication system capable of providing immediate contact with facility personnel and local authorities (e.g., fire department), and spill control equipment, as required by Env-Wm 509.02(a)(4) ("Violation 5"). Env-C 612.07(d) authorizes a fine of \$1,250 per requirement not met per storage area, for a potential fine of \$2,500.
6. Specifically, as stated in the NOPV, CNO failed to post a complete emergency posting at the nearest telephone to the Main Hazardous Waste Storage Area, as required by Env-Wm 509.02(b) ("Violation 6"). Env-C 612.07(h) authorizes a fine of \$1,000 per area.
7. Specifically as stated in the NOPV, CNO failed to mark one (1) satellite storage container of hazardous waste "Mixed Acids" located in the Plating Area, with the words "hazardous waste" and words that identify the contents of the container, as required by Env-Wm 509.03(g) ("Violation 7"). Env-C 612.07(j) authorizes a fine of \$1,000 per satellite storage area. The potential fine for this violation is included in the fine sought in Paragraph 1 because the violation occurred in the same satellite storage area.

8. Specifically, as stated in the NOPV, CNO failed to close one (1) box of twenty-three (23) universal waste lamps, except when universal waste is being added to or removed from the container, as required by Env-Wm 1112.03(c)(1) ("Violation 8"). For this violation, a fine of \$300 per container has been calculated pursuant to Env-C 610.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 1 through 3 and 6 through 8, because they are not Class I violations.

2. CNO agrees to pay \$4,600 as itemized below for Violations 4 and 5 which are Class I violations, upon execution of this Agreement by CNO:

- a. Violation 4 is a Class I violation. DES has determined due to CNO's high level of cooperation in providing information and its effort to correct that violation, that a 20% reduction should be applied. DES is thus seeking a fine of \$4,600
- b. Violation 5 is a Class I violation. DES received information from CNO, that an internal/external communication system, and spill control equipment was located within 100 feet of the Hazardous Waste Storage Area at the time of the inspection. However, there is no way to confirm that the requirement was met because this information conflicts with the inspection report. For settlement purposes only, DES is not seeking a fine for this violation.

3. Payment under Section V. Paragraph 2 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

4. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

5. By executing this Agreement, CNO waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

6. The effective date of this Agreement will be the date on which it is signed by an authorized representative of CNO, and the Director of the Waste Management Division, and the Commissioner of DES.

7. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

CORNING NETOPTIX, INC.

COPY

By: John Lucey, President
Duly Authorized

9/2/04
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Anthony P. Giunta, P.G.
Director
Waste Management Division

9/13/04
Date

COPY

for Michael P. Nolin, Commissioner

9/13/04
Date